

**Guille Steel Products Co., Inc. and Mark Hunter and Wallace Fleming, Jr. and Jerome Holloway and James C. Pebworth, Jr. and Wardell Coleman and Craig Thomas and Milis Delia and International Association of Bridge, Structural and Ornamental Iron Workers, Local 781, AFL-CIO.** Cases 5-CA-20217-1, 5-CA-20217-2, 5-CA-20217-3, 5-CA-20217-4, 5-CA-20234-1, 5-CA-20234-2, 5-CA-20234-3, and 5-CA-20234-4

June 26, 1991

## DECISION AND ORDER

BY MEMBERS CRACRAFT, DEVANEY, AND OVIATT

On November 21, 1990, Administrative Law Judge Karl H. Buschmann issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions and to adopt the recommended Order.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Guille Steel Products Co.,

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd, 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

We adopt the judge's finding that the Respondent violated Sec. 8(a)(3) and (1) by discharging 29 employees in January 1989 because of their union sympathies or to dissuade others from joining the Union. In so doing, we note the Respondent's contention that its January 1989 "housecleaning" to rid itself of employees with unacceptable attendance records was no different from prior housecleanings in August 1988, July 1987, and August 1986 which all coincided with the replacement of a receptionist whose duty it was to administer the Respondent's attendance policy. We find, however, consistent with the judge's analysis, that the Respondent commenced its January 1989 housecleaning in order to use the employees' attendance records as a pretext to cover its discriminatory motive for the discharges.

Additionally, we note that under the theory advanced by the General Counsel with respect to the Respondent's mass discharge, it was not necessary to demonstrate that the Respondent knew of the individual union sympathies of each of the employees who were discharged. Rather, the General Counsel prevailed by showing that the Respondent had general knowledge of its employees' union activities, and effectuated the discharges in order to discourage union activity or retaliate against the union activities of some. As the court noted in *Birch Run Welding & Fabricating v. NLRB*, 761 F.2d 1175, 1180 (6th Cir. 1985), enf'g, 269 NLRB 756 (1984), cited by the judge, the focus of this alternative Sec. 8(a)(3) theory is upon an employer's motive in discharging its employees rather than upon the antiunion or prounion status of particular employees. See also *Ballou Brick Co.*, 277 NLRB 41, 62 (1985); *Collectramatic, Inc.*, 267 NLRB 866, 872 (1983).

Inc., Virginia Beach, Virginia, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

*James P. Lewis and Eileen Conway, Esqs.*, for the General Counsel.

*A. W. VanderMeer Jr., Esq. (Hunter & Williams)*, of Norfolk, Virginia, for the Respondent.

*Gregory A. Burrier*, Representative Business Agent, of Virginia Beach, Virginia, for the Charging Party Union.

## DECISION

### STATEMENT OF THE CASE

KARL H. BUSCHMANN, Administrative Law Judge. These cases were tried at Norfolk, Virginia, on July 10, 11, and 14, 1989, based on a consolidated complaint, dated March 31, 1989. The complaints are based on the charges filed by several individuals (Mark Hunter, Wallace Fleming Jr., Jerome Holloway, James C. Pebworth Jr., Wardell Coleman, Craig Thomas, and Milis Delia) and the Union, International Association of Bridge, Structural and Ornamental Iron Workers, Local 781, AFL-CIO, on various dates between January 26 and March 20, 1989. The complaints charge the Respondent, Guille Steel Products Co., Inc., with violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act) by coercively interrogating its employees, by creating the impression of surveillance of the employees' union activities, by a more stringent review of employees' work records and the issuance of discriminatory warnings, and by the discharges of its employees in order to discourage them from any concerted protected activities.

The Respondent filed an answer on April 17, 1989, in which it admitted the jurisdictional allegations of the complaint and the supervisory status of its employee Raymond Ellis and in which the Company denied that it committed any unfair labor practices violative of the Act.

On the entire record,<sup>1</sup> including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel and the Company, I make the following

### FINDINGS OF FACT

#### I. JURISDICTION

The Respondent, Guille Steel Products Co., Inc., is a Virginia corporation located in Virginia Beach, Virginia, where it is engaged in the manufacture and nonretail sale and distribution of steel bar joists and related products. With sales and shipments of its products in excess of \$50,000 directly to points outside the State of Virginia, the Respondent is admittedly an employer within the meaning of Section 2(2), (6), and (7) of the Act.

<sup>1</sup> By letter of October 13, 1989, the Respondent filed a motion to supplement the record of the hearing with a copy of a decision of the Virginia Employment Commission. The General Counsel filed an opposition to the motion. The Respondent's motion is granted.

The Union, International Association of Bridge, Structural and Ornamental Iron Workers, Local 781, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

## II. FACTS

In March 1988, Gregory Burrier, the Union's business agent, approached three employees of Guille Steel and provided them with union material in an effort to organize the employees. On July 1, 1988, at about 3:15 p.m. Burrier and Anthony Walencik, district representative of the International union, distributed union literature to the Respondent's employees as they left the plant at the end of their shift. Within minutes Plant Manager Raymond Ellis appeared with several other men. Because they wore white hardhats and carried walkie-talkies, they appeared to be supervisors. They inquired what the union representatives were doing. They spoke into their walkie-talkies, appeared to write names on their clipboards, and told the employees not to accept the union material (Tr. 74-75, 394). Burrier and Walencik returned 2 weeks later and again they were met by Ellis and his men equipped with walkie-talkies and clipboards. They admonished the employees not to accept the union material and also appeared to write down the names of employees who took the union literature.

In November 1988, Burrier responding to a telephone call from one of the employees with an interest in the Union, contacted the employees at the nearby bus stop, the gas stations, and the 7-Eleven across from the plant entrance. As a result, a few of the employees began to sign union cards. After November 1988 until early January 1989, Burrier solicited the employees of Guille Steel at the nearby 7-Eleven stores three times a week at noon, passing out union literature and talking to them (Tr. 40). One of the stores is located approximately half a mile from the plant, and the other only about 200 yards away from the plant entrance. Although Burrier attempted to contact the employees away from the plant, Jackson Timms, the son of one of the owners and a foreman, made it a practice of being at the 7-Eleven store at noon. Burrier "would see Mr. Timms get out of his car and stand directly in front of the plate glass window of the 7-11, and appear to be watching the employees" (Tr. 36). Burrier also noticed that during Timm's presence at the 7-Eleven the employees avoided him (Burrier) and left. Burrier estimated that Timms must have visited the store at least 9 or 10 times in early January.

On January 20, 1989, Burrier and three additional union officials returned to the front and rear entrance of the plant to pass out union material. At the end of the shift several employees came directly to the union representatives and reported that they had been fired. Also present at the scene were three company men who communicated with walkie-talkies and who appeared to write on their clipboards. One of the three was Timms. Ellis could be seen standing in the front entrance of the plant. Once Ellis shouted to Robert White, an employee, and said, "Don't talk to him," while White was engaged in a conversation with one of the union representatives (Tr. 25-26). As one of the employees handed Burrier a company pamphlet entitled "Ask the Union," Timms tried to take it away from Burrier. Burrier observed a dramatic decrease in the number of employees who were

willing to accept the union handbills in January compared to the first and second solicitation efforts in July.

On January 19, 1989, the Company discharged four employees ostensibly for their poor attendance records. Among them was Jerome Holloway, the Charging Party, who told Burrier that he had been fired because "he must have talked to the wrong person" (Tr. 66). On the following day, nine more employees were discharged. Among them were Milis Delia, Wallace Flemming Jr., Mark Hunter, and James Pebworth, all Charging Parties. As they left the plant at about 3:30 p.m. they immediately approached Burrier to inform him that they had been fired because of their poor attendance. Between January 19 and 31, 1989, the Company discharged 30 employees as a part of what it termed a "house cleaning" to weed out employees who had an attendance problem.

The Union made another attempt at handbilling in April but its organizational efforts finally failed. Only about 17 employees signed union cards and the employees were increasingly reluctant to accept the Union's handbills. After an attempt to handbill the plant in April 1989, Burrier discontinued any subsequent efforts because in his words "the majority of the employees in the plant were frightened" (Tr. 34).

The Respondent's conduct during the union campaign exceeded a legitimate antiunion campaign in several respects.

### A. Interrogations

The complaint alleges numerous incidents of unlawful interrogations between December 19, 1988, and January 20, 1989, by Raymond Ellis, the Respondent's plant manager and admitted supervisor. The record shows that Ellis questioned employees Craig Thomas, Milis Delia, Robert White, Anthony Cofield, and Gabriel Slade. Ellis, although called as a witness, did not testify about the incidents of interrogations. Accordingly, the testimony of the employee witnesses is unrefuted. Thomas testified that he was in Ellis' office on January 4, 1989, to request the assistance of another worker on his line, because the steel was too heavy for one man. Thomas was about to leave, when Ellis asked him, "Has that union guy been over to your house?" Thomas replied that he had been there three or four times but had been unable to reach him (Tr. 97). Ellis also spoke about some missing photographs showing the house of the owner of the plant. Ellis wanted to know whether Thomas had seen the photographs in the possession of the union representative. Thomas replied that he had not seen any photographs (Tr. 98). Approximately 1 week later, at about 1 or 2 p.m. Ellis approached Thomas at his work station and said, "I know about the union guy coming to your house." Thomas acknowledged that the union representative had come and talked to him. Ellis said, "I want to tell you don't let him steer you in the wrong direction. You know, you've got your own mind, you make up your own decision" (Tr. 99-100).

Thomas was subsequently warned about certain safety violations and ultimately discharged.

Ellis had a conversation with Milis Delia, a welder at the Respondent's plant on January 20, 1989, in reference to an incident on the prior day, January 19, 1989. On that day, Burrier in his blue Thunderbird automobile, had followed Delia and a coworker. Shortly before Delia had reached his house, Burrier was able to signal to him to stop. Burrier per-

sued them to sign union cards. On the following day, Ellis approached Delia at his working bay 3 and asked: "Did a guy go to [your] house." Delia asked "what guy?" and Ellis replied: "The guy that owns the Thunderbird." Delia feigned ignorance and Ellis said: "All right. You don't know the guy I'm talking about. Okay" (Tr. 130).

On or about January 10, 1989, Ellis questioned Robert White, a welder working in bay 4 with Wardell Coleman, a coworker. Ellis asked them whether they had signed union cards. Both denied signing any cards. Ellis then asked: "Have you been talking to the Union? Have they come to your house?" Both employees said "no." (Tr. 264.) Three or four days later, Ellis asked the same employees the same questions and both answered "no." Subsequently, White and Coleman were on a break and walked past Ellis on their way to the snack room. Ellis repeated his questions and both employees again denied any union involvement (Tr. 266). White testified that he had not signed a union card at the time Ellis questioned him about it, but that he signed a card after his discharge.

Another incident of interrogation occurred on January 5, 1989, as witnessed by employees Anthony Cofield and Gabriel Slade. On the prior day, January 4, they had signed union cards. On the following day at about 8 a.m., Ellis called both employees into his office. Ellis asked whether they had been talking to the Union and whether they knew anybody else who had done so. Cofield denied that he had talked to any union representative (Tr. 378). Slade admitted talking to the Union when the representative visited his home. According to Slade, Ellis told them that the Union could cause them to lose their jobs (Tr. 389). Cofield recalled that Ellis questioned him again about the Union on the following day as he went to the water fountain. Cofield again denied talking to anyone from the Union.

Contrary to the argument of the Respondent, the record shows that the interrogations were conducted in an atmosphere of coercion. The questioning was initiated by the plant manager, usually in his office or at the employees' work station. The questions were direct and elicited whether the employees had talked to the union representative, whether he had visited their homes, whether they had signed cards, and whether they were for the Union. Indeed, Ellis made a threat to employee Slade that any union activity could result in a loss of jobs. Under such circumstances, the Respondent plainly interfered with the employees' Section 7 rights in violation of Section 8(a)(1) of the Act.

#### B. Surveillance

The complaint alleges that the Respondent created the impression among the employees that their union activities were under surveillance on January 19 and 20, 1989. The complaint alleges that the Respondent acted through Raymond Ellis on January 19 and through Bunice (Bird) Lynch on January 20. The background information in the record shows that on 2 days in July 1988, when the Union was soliciting the employees near the entrance of the plant, Ellis, accompanied by three or four nonproduction supervisors carrying walkie-talkies and clipboards, observed the Union's handbilling activity. The men spoke into the walkie-talkies, appeared to write down the names of employees, and told them not to accept the literature. The Union engaged in handbilling and solicitations of the employees in November

1988 and in early January 1989 at the nearby 7-Eleven food stores. There, Jackson Timms, a foreman and the owner's son, observed the union activity on numerous occasions.

With regard to the specific allegations in the complaint, the record shows that the Union resumed its handbilling in front of the plant on January 20, 1989, that Ellis remained in the doorway of the plant, and that three individuals with walkie-talkies were present at the entrance and engaged in the following conduct (Tr. 26):

They were communicating through the walkie talkies. It also appeared they were writing something on a clip board once again, and they were telling the employees not to take the literature, that that stuff would get them in trouble.

Burrier identified one of the three men with walkie-talkies as young Jackson Timms, but he mistakenly described the other as Bird Lynch.<sup>2</sup> Burrier testified that he "assumed" that the three men were supervisors. In short, while the Union engaged in handbilling in front of the plant Ellis appeared in the plant's doorway observing the union activity.<sup>3</sup> While Robert White, an employee, was talking to one of the union representatives near the front of the plant, Ellis shouted at White saying: "Don't talk to him" (Tr. 27). Among the three men with walkie-talkies, positively identified, was Jackson Timms. Although the Respondent denied the supervisory status of Timms, uncontradicted record evidence shows that Timms was the son of one of the owners of the plant, that he was perceived and functioned as a foreman, and that he informed James Pebworth Jr. of his discharge (Tr. 26, 72, 329-330). He regularly observed the Union's solicitation of the employees and "tried to grab [a company pamphlet] out of" Burrier's hand (Tr. 26, 35).

The Respondent's conduct on that day, consisting of Ellis' observation of the union activity from the front entrance, his shouting at an employee, the presence of perceived supervisors including Timms,<sup>4</sup> and his using walkie-talkies and clipboards, was perceived by the employees as conduct sanctioned and supported by management. Moreover, the Respondent's conduct went beyond the mere observation of union organizers publicly handbilling in front of the plant. Here, management appeared to use the walkie-talkies and the clipboards and yelling at employees which inhibited the employees and interfered with their Section 7 rights. *Crown Cork & Seal Co.*, 254 NLRB 1340 (1981). I therefore find that the Respondent created the impression of surveillance in violation of Section 8(a)(1) of the Act.

#### C. Disciplinary Warnings and Discharges

According to the complaint, three employees received warnings, and numerous employees were discharged, including Wardell Coleman, Milis Delia, Wallace Fleming Jr., Jerome Holloway, Mark Hunter, James C. Pebworth Jr., Craig Thomas, and Robert White, because of their union support

<sup>2</sup> Raymond Ellis testified that walkie-talkies are used by "nonproduction foremen" and maintenance employees (Tr. 733).

<sup>3</sup> Ellis admitted to actually going "out to where that leafletting has taken place" in July, but he denied having "gone out to that location" on subsequent times (Tr. 724). His testimony, however, is silent as to whether he was present at the plant's doorway observing his men with walkie-talkies.

<sup>4</sup> *NLRB v. Mars Sales & Equipment*, 626 F.2d 567, 572 (7th Cir. 1980). I find that Timms was an agent of the Respondent.

and in order to discourage others from engaging in such activities.

The Respondent submits that between January 19 and 31, 1989, 30 employees were discharged—all but one for poor attendance. The one employee, Craig Thomas, was terminated by Plant Manager Ellis because of safety violations. The General Counsel argues that where the “motive and timing are present, along with undeniable knowledge of the Union’s campaign among the employees” victims of a mass termination will be protected.

*Craig Thomas.* Employed since November 1986 as a laborer, Thomas worked under the supervision of Bunice Lynch, a foreman in bay 3. Thomas was interested in the Union’s effort to organize the employees. On January 4, 1989, Thomas signed a union card, and after that time Thomas happened to be in Ellis’ office, when he asked Thomas whether a union guy had been at his house. Thomas confirmed that the Union had been at his house several times but said that he had missed the representative each time. Ellis also talked about some missing photographs of a house belonging to the owner of the Company. During a subsequent conversation approximately a week later, Ellis told Thomas that he (Ellis) knew about the Union’s visit at Thomas’ house and warned him not to let the Union steer him in the wrong direction. Thomas acknowledged speaking to the Union at that time.

On January 20, 1989, Ellis gave Thomas a disciplinary warning for his tardiness on January 17 (G.C. Exh. 27). On January 23, 1989, Ellis called Thomas into his office and gave him a written warning for a safety violation, citing “wearing sneakers in the plant. No hard hat” (G.C. Exh. 28). Thomas protested, saying, “Well, if I don’t have my hard hat on, then everyone else should, you know. If I ain’t got mine on, then everybody else you know, why do they got theirs off?” (Tr. 103–104.) Three days later, on January 26, 1989, Ellis told Thomas, “Thomas, I saw you over there without your hard hat” (Tr. 109). Thomas replied that he must have seen him early in the morning or during the break, but that other people also failed to wear their hardhats. Ellis said, “I saw what I saw and that was final” (Tr. 110). He gave Thomas his discharge notice which cited his safety violation and leaving his work area (G.C. Exh. 29).

Ellis testified that he was the safety man in the plant and had instructed all employees to wear safety equipment. He explained that Thomas had been warned, and that he was the only one who failed to wear his safety equipment. Ellis’ testimony did not contradict his interrogations of Thomas about the Union. But his testimony was inconsistent with that of Thomas with respect to Thomas’ being the only one who failed to wear his safety equipment. In that regard, I find Thomas’ testimony more credible. He impressed me as a relatively unsophisticated witness, unlikely to invent the conversations with Ellis or the observations that other employees failed to wear their safety equipment or that the Company enforced the rules only on rare occasions when visitors were present. Considering the timing of the discharge, Ellis’ interrogation of Thomas’ union involvement, as well as the pattern of the discharges as described below, I find that Thomas was discharged because of his union contacts. The warning he received for admittedly being tardy appear to have been incurred in the regular course of business. However, warning and discharging this employee who committed no more safe-

ty violations than other employees was discriminatory and designed to get rid of an employee who was interested in the Union.

*Milis Delia.* This employee has been a welder since October 1987. He had a brief encounter with the Union on January 19, 1989. On that day Burrier in his blue Thunderbird followed Delia home. When Delia stopped to drop off another employee, Burrier got his attention, he spoke with both employees and persuaded them to sign union cards (G.C. Exh. 30). On the following day, January 20, 1989, Delia worked in bay 1, where Ellis approached him and asked whether a guy in a blue Thunderbird came to his house. Delia pretended ignorance, saying “What guy? I don’t know. I don’t know the guy you’re talking about.” (Tr. 130.) Approximately 5 minutes later, Delia was called into Ellis’ office and handed a discharge notice for absenteeism and tardiness (G.C. Exh. 31). He was discharged without a prior written warning. Delia’s testimony which was not contradicted established that he had obtained permission for leaving early 1 day, that he reported his absence on 2 days when his car was broken down, and that he could not have left work early on November 24 because it was the Thanksgiving holiday. Delia justified at least 2 of the 5 delinquent days and attempted to explain this to Ellis on the day of his discharge and again a week later when he received his final paycheck, but Ellis refused to listen (Tr. 132–133). Considering the timing of his discharge, 5 minutes following an interrogation about his union involvement, as well as Ellis’ refusal to listen to Delia’s justification, clearly shows that the Respondent discharged this employee for pretextual reasons, in violation of Section 8(a)(3) and (1) of the Act.

*Jerome Holloway.* Holloway became employed as a laborer on August 2, 1988, and worked under the supervision of Bunice Lynch. He received a pay increase on November 1, 1988, and was told by Ellis that he was a good worker.

On January 10, 1989, Holloway signed a union card given to him by Burrier at his home (G.C. Exh. 32, Tr. 151). On January 19, 1989, Holloway was called into the office by Ellis. Holloway saw papers and a check in Ellis’ hand and thought that it was an evaluation for some special work he had performed for his foreman, Lynch, and a bonus check. Instead, it was his termination notice with a check attached to it. The termination notice showed that he was charged with tardiness on certain days for leaving early and reporting late for work.

The record contains a warning notice dated December 19, 1988, showing that Holloway left early and returned late from lunch on certain dates (Tr. 151, G.C. Exh. 33). Holloway denied ever seeing this notice or receiving a warning during his employment. Holloway also testified that the reasons for leaving early on two of the dates shown on the notice were due to a breakdown of a waterline in the plant requiring the employees to leave early. With respect to another date showing that he returned late for lunch, Holloway recalled obtaining permission to take his child to a physician (Tr. 153). The notice included a day when he supposedly left early on November 27, yet that day was a Sunday and not a workday (Tr. 155).

When Holloway attempted to explain these errors on his termination notice, Ellis replied that he should have had a doctor’s excuse. But Holloway protested saying that he had hardly missed any time and that he was known as a good

worker. Ellis said, "it was coming from the office . . . because they're not putting up with it this year . . . letting absenteeism and tardiness get away this year" (Tr. 158).<sup>5</sup>

Although the record does not show that the Respondent was aware of Holloway's union support, the timing of his discharge and the errors pertaining to some of the alleged absenteeism, as well as the pattern of Respondent's discharges discussed below, convince me that this employee was discharged because of the union campaign.

*Robert White and Wardell Coleman.* A welder in the employ of Guille Steel since December 12, 1988, Robert White worked under the supervision of Supervisor Otis Powell until his discharge on January 25, 1989. On that day, White was working at his station when he was called on the intercom system to the office. There Ellis showed him his discharge notice which showed that he had been warned on January 20, 1989, and that he had incurred two unexcused absences and lateness on several days (G.C. Exh. 39, Tr. 259). Ellis told him that he was discharged because of his absenteeism. White said that he was absent only once and late on another occasion. Ellis responded: "This is what we're going by." "You have to sign this" (Tr. 259). White admitted being late on one occasion but denied his lateness on December 13, 1988, and January 19 and 20, 1989. White signed the notice and left. The record is not clear whether White saw his warning notice marked, "Refused to sign" (G.C. Exh. 38). White's denial that he received it is contradicted by his affidavit (Tr. 257, 274).<sup>6</sup>

White testified that on Friday, January 20, 1989, he picked up his paycheck at the end of the day. Attached to the check was a note stating, "Ask the union what happened to your job" (Tr. 261). He left the plant and remembered the union representatives at the end of the driveway, as well as the company men with walkie-talkies. One of the union representatives whom White knew as Dino approached White's car and tendered a pamphlet. White told Dino that he "couldn't take the pamphlet on the premises because everybody was watching" (Tr. 269). White recalled that one of the foremen with a walkie-talkie was within 20 yards and watched every car passing by including his own.

White also testified about several conversations with Ellis. Around January 10 he was working at bay 4 with Wardell Coleman, another employee, when Ellis approached them and asked whether they had signed union cards. Both employees denied that they had. Ellis then inquired, "Have you been talking to the Union? Have they come to your house?" They answered, "No." Three or four days later Ellis came to their work station and repeated his interrogation of the two employees. Ellis repeated the same questions a third time as they walked past the breakroom (Tr. 265-266).

I find that White, whose testimony was not contradicted by Ellis', was discharged because of the union campaign. The timing of his warning and his discharge in close conjunction with the union campaign, as well as the repeated interrogations by Ellis indicating that management suspected his union involvement, point to the conclusion that his absenteeism was used as a pretext. The note on his paycheck on January 20 served as a precursor to his discharge and

strengthens the conclusion that the union campaign was the real reason, not the employee's attendance.

Fellow employee Wardell Coleman was also discharged on January 25, 1989. The record contains two warning notices, one for tardiness and the other for "loafing on the job" and "not being on the job. Talking to men in Bay 3 instead of working in Bay 2" (G.C. Exhs. 49, 50). His employment history shows that his violations include tardiness and horseplay (R. Exhs. 24(a) and (b)). Coleman did not testify. Although the Respondent may have been motivated to discharge Coleman because of the union campaign, I find the record evidence insufficient to make such a finding in the absence of Coleman's explanation about the severity of his alleged misconduct which differed from the usual pattern of alleged absenteeism.

*Mark Hunter.* This employee had worked as a welder since September 1987 under the supervision of Otis Powell. Hunter was one of the early union supporters who had lunch with Burrier in March 1988 (Tr. 17, 299).<sup>7</sup> He and a friend met Burrier at a "sub shop" across the street from the plant. When he returned to the plant in the afternoon on the same day or the next day, Ellis called Hunter into his office and asked, "Did anybody talk to you from the union?" Hunter denied that he had and was sent back to work. On January 18, 1989, Burrier followed Hunter to a junkyard where he and another employee signed a union card (G.C. Exh. 41, Tr. 305).

On January 20, 1989, Ellis discharged Hunter under the following circumstances: "I came in that day and I worked up until like five minutes before time to quit and Ray Ellis called me in the office, gave me the slip and he said I was fired" (Tr. 307, G.C. Exh. 43). When Hunter protested, Ellis told him to see the people in the office. There, one of the personnel officers told him that they could not help him and that he should have been fired a long time ago.

Hunter had received a warning notice showing numerous absences and excessive tardiness (G.C. Exh. 40). The notice put him on probation from December 19, 1988, to January 18, 1989. According to the discharge notice, Hunter was late on two occasions during that time.

Although the Respondent is correct that this employee had a record for excessive absenteeism and was therefore subject to discharge, the timing of his termination, his union support, and the entire pattern of the discharges convince me that the Respondent's reason for his discharge was pretextual. If, as the Respondent contends, absenteeism was of such importance, Hunter should have lost his job prior to the union campaign. But he, like other employees, who were interrogated about the Union were discharged at the time of the union campaign. That he would have been discharged in the absence of the union activity, as suggested by the Respondent, is not supported by the record, since periodic "house cleanings" usually occurred in the summer. Considering the timing of his discharge, the Respondent's interrogation of this employee, and the Company's antiunion animus as well as the pattern of the Respondent's conduct, I find that the Respondent violated Section 8(a)(3) and (1) of the Act.

*James Pebworth.* James Pebworth was hired on November 14, 1988, as a welder. After several months, he worked on

<sup>5</sup> Holloway's testimony was not contradicted by Ellis.

<sup>6</sup> White's testimony was inconsistent on this point, and I find that he saw the document approximately 1 week prior to his termination.

<sup>7</sup> Hunter, who impressed me as unsophisticated, was incorrect in recalling that his union contacts dated back to 1987 (Tr. 298).

the night shift under the supervision of Jackson Timms (Tr. 324-325). Pebworth was terminated on January 20, 1989. On that day he had gone to the plant at 3:30 in the afternoon to pick up his paycheck. Outside the plant he got on his moped and spoke to a friend when he observed several employees in the parking lot "yelling and screaming about being fired and getting all mad" (Tr. 328). He "noticed two people out in the front of the entrance to Guille Steel were handing out pamphlets. And there was a man sitting up in the grass watching them." He also saw police cars in the parking lot watching. Burrier asked Pebworth whether he wanted a pamphlet. He said, "Yes, sir," put the pamphlet in his back pocket, and left. At 7:50 p.m. Pebworth returned, ready to begin his 8 o'clock shift. In Pebworth's words, the following incident occurred (Tr. 329-330):

I saw Jack Timms coming out from the office as I was locking up my moped. And he told me that he had some good news for me and some bad news and which one I wanted first. And I said, "I guess I'll take the good news."

...

He said, the good news is that you're the only person on the night shift who got their check today. And the bad news is—And I stopped him there and said, "Let me guess. I've been fired, right?" And he said, "You got it."

Pebworth received his termination notice several days after his discharge from Burrier.<sup>8</sup> The notice showed that the reason for the discharge was absenteeism on 2 days and tardiness on three occasions. Pebworth attempted to justify his absences and his tardiness. In any case, I find that the Company's reason for the discharge was pretextual. If his attendance had been the real reason, the Respondent could have saved Pebworth a trip to the plant to inform him of this discharge on that day. The timing of his discharge only a few hours after he spoke to the union representative and openly accepted the union pamphlet, as well as the entire pattern of the Respondent's conduct, and its open antiunion animus persuade me that the real reason for his discharge was the union campaign.

*Wallace Fleming Jr.* A welder in the Respondent's employ since September 26, 1988, Fleming was discharged on January 20, 1989. On that day, Fleming was called into the office and handed his discharge notice (G.C. Exh. 45, Tr. 351). Ellis told him, "'Well, I got it from the higher ups.' Anybody that missed any time, he has to automatically dismiss them." (Tr. 351.) Fleming did not dispute that he had missed some days but reminded Ellis that he had received permission for one of the days. Ellis, however, said that he was sorry, that Fleming had done a good job but that he (Ellis) had orders from higher ups. Then he "just shook his head and walked away." (Tr. 351-353.)

Fleming testified that he signed a union card on December 14 as he got off from work at 3:30 p.m. He had talked about the Union with Burrier, the union representative, at the bus stop approximately 3 miles away from the plant and after the conversation had signed the card.

<sup>8</sup>Pebworth testified that he did not receive the notice from anyone in the Respondent's supervisory hierarchy. Timms did not testify.

To be sure, the record does not show, as the Respondent correctly observes, that the Respondent was aware of this employee's union support. Nevertheless, the timing of the discharge of this individual during the height of the union campaign, the pattern of the discharges, and the Respondent's antiunion animus convince me that also this discharge was motivated by the employee's union support. Here the Respondent did not issue a preliminary warning to the employee for his absenteeism. In that regard the Respondent acted inconsistently. Consistent with the Respondent's antiunion animus were its discharges at the time of the union campaign of employees who had signed union cards or otherwise shown their union support. I accordingly find that the Respondent violated Section 8(a)(3) and (1) of the Act.

#### D. Additional Discharges

The complaint alleges that the Respondent discharged other employees as a result of a more stringent review of employees' work records and a more strict enforcement of its work rules because of the union campaign. The record shows that the employment of a total of 30 employees, including the Charging Parties, were terminated between January 19 and 31, 1989.<sup>9</sup> The Respondent admitted in its brief that Guille Steel discharged the following employees (R. Br. 2):

On January 19, 1989, Jerome Holloway and three other employees were discharged by Guille Steel. (G.C. 8, 11, 15, 34; R. 12.) On January 20, 1989, nine employees, including James Pebworth, Milis Delia, Wallace Fleming, Jr. and Mark Hunter were discharged. (G.C. 10, 20, 21, 24, 51; R. 19, 20, 21, 22.) On January 24, 1989, six employees were discharged. (G.C. 5, 6, 9, 13, 17, 22.) On January 25, 1989, five employees, including Robert White and Wardell Coleman, Jr. were discharged. (G.C. 7, 16, 23; R. 23, 24.) On January 26, 1989, two employees, including Craig Thomas were discharged. (G.C. 25; R. 34.) On January 27, 1989, two employees were discharged. (G.C. 14, 19.) On January 31, 1989, two employees were discharged. (G.C. 12, 18.)

A fair appraisal of the record shows that these terminations were motivated by the union campaign, and that some employees, as already discussed, were discharged because of their union support and others in order to dissuade them from supporting the Union.

In its letter of February 6, 1989, the Respondent states as follows (G.C. Exh. 2):

Former employees Mark Hunter, Wallace Fleming, Jr., Jerome Holloway and James C. Pebworth, Jr. were all discharged for violation of Company rules concerning excessive tardiness and/or absenteeism without valid excuses. They were not discharged for "off the job Union activities." They were discharged, along with 23 other employees, as part of a periodic housecleaning of employees with poor attendance records.

To be sure, the Respondent showed that the discharged employees (except Craig Thomas) had a record of absentee-

<sup>9</sup>The names and dates of employment of the employees are included in an appendix attached to the General Counsel's brief.

ism or tardiness. However, the record shows that other employees who had a record of absenteeism or tardiness were still employed (G.C. Exhs. 55, 57, 58, 59, 63, 64). Moreover, some of the discharged employees received warnings, but most of them did not and were summarily discharged. In short, the Respondent's conduct and its policy were inconsistent. Ellis who, as explained above, informed several of the Charging Parties that they had been fired, denied that he had any input in the decision. His testimony related mainly to the discharge of Thomas and his safety record. The Respondent's principal witness was General Manager Carrie Winkler who testified that she "oversee[s] the day to day functions of the organization, to include production, transportation, personnel, everything in the office" (Tr. 615). She testified that she had delegated the function to keep the attendance of the 120 to 140 hourly employees to the receptionist. The receptionist also had the responsibility to hire employees (Tr. 617). Winkler testified about the additional responsibilities of the receptionist as follows (Tr. 621):

Well, once the information comes off the CRT and she marks the attendance cards accordingly, she is to *use her discretion* and give the individual a warning, probation, *termination*, whatever disciplinary action may be needed. [Emphasis added.]

According to Winkler, in December 1988 she discovered that Jaqueline Bodisch, the receptionist, had failed to perform her daily duties of issuing warnings, probations, and terminations. As a result she "counseled" her and put Bodisch on probation. By January, Bodisch had not improved and Winkler terminated her employment in February. Winkler testified that she "went in and got all the records caught up, did it [herself], and did a house cleaning; got the warnings, probations, terminations, everything done" (Tr. 628). Similar house cleanings were undertaken, according to the Respondent, in August and September 1986, in July and August 1987, and in August and September 1988. It is therefore clear that a "house cleaning" in the winter months was unprecedented.

Winkler's testimony was contradicted in some important aspects by that of Jaqueline Bodisch. She testified that she as a receptionist from July 1988 to February 6, 1989, would only hire laborers but not welders. She testified that her responsibilities with respect to employees' attendance meant that she "would have to mark their attendance cards when their [sic] on vacation and when they're absent or tardy; and [she] served warnings when [she] was informed to" (Tr. 739-740). She further testified (Tr. 741): "I never terminated anyone, unless I was told to give them a notice saying that they were terminated. I never made the judgment myself to terminate anybody." Indeed, she stated she "was not told that [she] could just terminate people from the plant, you know, without an approval from somebody else, without somebody else deciding." "Ray Ellis was telling me when to serve notices and everything" (Tr. 751, 753, 754). Bodisch also testified that, during her tenure, a house cleaning was done on a small scale and never involved "that many people" (Tr. 748). In short, Bodisch firmly denied ever receiving any instructions that she was to use her discretion to discharge employees for any reason.

I found Winkler's testimony unconvincing particularly as to her stated reasons for discharging such a large number of employees, almost one-fourth of the work force in 1 month. I also doubt her testimony that she had delegated to the receptionist, a newly hired individual, the task of hiring and firing the production employees at the plant. Bodisch's forthright and sincere testimony convinces me that even though she had to keep current all timecards and record the employees' attendance, she was never directed to terminate anyone without receiving specific instructions from Ellis. The record shows that discharges on such a massive scale during a 1-month period or during the winter months were unprecedented. The Respondent conceded that house cleanings in the past 3 years routinely occurred during the summer months.<sup>10</sup>

The timing of these terminations in January 1989 at the time of the union campaign suggests that the Company had an unlawful motive. *Birch Run Welding & Fabricating v. NLRB*, 761 F.2d 1175 (6th Cir. 1985). The Respondent through its unlawful interrogations and surveillance demonstrated its antiunion animus. Moreover, Ellis, Timms, and others made it a practice of observing the employees as they left the plant or when they bought lunch at the local 7-Eleven where the union organizers met with the employees. The Respondent had the opportunity to determine who among the employees accepted the union literature or otherwise engaged in union activities.<sup>11</sup> Burrier perceived that the employees willingly accepted the union pamphlet initially, but increasingly became reluctant to do so. Testimony in the record supports that perception. And the record shows that the union drive faltered and finally failed. Consideration of the Respondent's conduct as a whole shows a pattern of direct interference with the employees' Section 7 rights. Here, the Respondent's asserted reasons for the discharges do not show a dual motive. The employees' attendance records were used as a pretext by the Respondent. Although it is conceivable that the Respondent's annual review of the employees' records during the summer months may have caught several of the employees, the Respondent's inconsistent practice in this regard and the unreliable testimony of Plant Manager Winkler would render such an analysis speculative and hypothetical.

#### CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By coercively interrogating its employees concerning their union sympathies, the Respondent violated Section 8(a)(1) of the Act.
4. By appearing to engage in the surveillance of the employees' union activity, the Respondent violated Section 8(a)(1) of the Act.
5. By threatening its employee with discharge, the Respondent violated Section 8(a)(1) of the Act.
6. By issuing warnings to employees Craig Thomas and Robert White, because of their union activity, the Respondent violated Section 8(a)(1) and (3) of the Act.

<sup>10</sup> *D. H. Baldwin Co.*, 207 NLRB 25 (1973), *enfd.* 505 F.2d 736 (8th Cir. 1974).

<sup>11</sup> An employer's knowledge of union activity may be inferred from all the circumstances. *Marathon LeTourneau Co.*, 256 NLRB 350 (1981).

7. By discharging Craig Thomas, Robert White, Milis Delia, Wallace Fleming Jr., Jerome Holloway, Mark Hunter, James Pebworth Jr., and others<sup>12</sup> because of their union sympathy or to dissuade others from joining the Union, the Respondent violated Section 8(a)(3) and (1) of the Act.

8. The unfair labor practices described above affect commerce within the meaning of Section 2(6) and (7) of the Act.

#### THE REMEDY

On concluding that the Respondent has engaged in certain unfair labor practices, I find it necessary to recommend that it cease and desist therefrom and take certain affirmative action necessary to effectuate the policies of the Act. Having unlawfully issued warnings and discharged Craig Thomas, Robert White, Milis Delia, Wallace Fleming Jr., Jerome Holloway, Mark Hunter, James Pebworth Jr., and others named in Appendix B, the Respondent shall offer them reinstatement and make them whole for lost earnings and other benefits computed on a quarterly basis from the date of discharge to the date of a proper offer of reinstatement, less net interim earnings in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>13</sup>

#### ORDER

The Respondent, Guille Steel Products Company, Inc., Virginia Beach, Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Engaging in the appearance of surveillance of employees' union activity.

(b) Coercively interrogating its employees concerning their union activities.

(c) Threatening its employees with discharge because of their union activity.

(d) Discharging or otherwise discriminating against employees because of their union activities.

(e) Issuing warnings to employees because of their union activities.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Craig Thomas, Robert White, Milis Delia, Wallace Fleming Jr., Jerome Holloway, Mark Hunter, James Pebworth Jr., and others named in Appendix B immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or any other rights or privileges previously enjoyed and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of the decision.

<sup>12</sup> See App. B.

<sup>13</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Remove from its files any warnings issued to Craig Thomas and Robert White and any references to the unlawful discharges of the discharged employees and notify the employees in writing that this has been done and that the warnings and/or discharges will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its Virginia Beach, Virginia facility copies of the attached notice marked "Appendix A."<sup>14</sup> Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>14</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX A

#### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT engage in the appearance of surveillance of our employees' union activity.

WE WILL NOT coercively interrogate our employees about their union activities.

WE WILL NOT threaten our employees with discharge or other reprisals because of their union activity.

WE WILL NOT discharge or otherwise discriminate against our employees because of their union activities.

WE WILL NOT issue warnings to our employees because of their union activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Craig Thomas, Robert White, Milis Delia, Wallace Fleming Jr., Jerome Holloway, Mark Hunter, James Pebworth Jr., and others named in Appendix B full and immediate reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority and other rights and privileges, and WE WILL make them whole for any loss of earnings they may have suffered by reason of the discrimination practiced against them with interest.



WE WILL remove from our files all reference to any warnings issued to Craig Thomas and Robert White and references to the discriminatory discharges of the discharged employees and notify each of them that the warnings and/or discharges will not be used against them in any way.

GUILLE STEEL PRODUCTS CO., INC.

APPENDIX B

<i>Name</i>	<i>Date of Termination</i>
Clark, Steven G.	January 19, 1989
*Holloway, Jerome	January 19, 1989
Las Duece, Rogelio	January 19, 1989
Pabalan, Emiliano	January 19, 1989
Carey, Charles E.	January 20, 1989
*Delia, Milis	January 20, 1989
*Fleming, Wallace Jr.	January 20, 1989
Foster, Marcus	January 20, 1989
*Hunter, Mark	January 20, 1989
*Pebworth, James	January 20, 1989

Sanderson, James	January 20, 1989
Smith, Larry	January 20, 1989
White, Donald	January 20, 1989
Allbritton, Michael	January 24, 1989
Brooks, Smalley	January 24, 1989
Donald, James L.	January 24, 1989
Matin, Ahmad	January 24, 1989
Revell, Antonio	January 24, 1989
Swain, Tommy, Jr.	January 24, 1989
White, Robert	January 25, 1989
White, Timothy	January 25, 1989
Cartledge, Daniel	January 26, 1989
Press, Paul A.	January 26, 1989
*Thomas, Craig	January 26, 1989
Whitehurst, Raymond	January 26, 1989
Miles, Calvin	January 27, 1989
Russell, Bernard	January 27, 1989
Lassiter, Walter	January 31, 1989
Rogers, Darrick	January 31, 1989
*Charging Party	